

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

1 - 12730 MLW

CASE NO.

LINWOOD S. HARRIS,
Plaintiff,

v.

METROPOLITAN LIFE
INSURANCE COMPANY AND
SEARS, ROBUCK AND CO.
LONG TERM DISABILITY PLAN,
Defendants.

MAGISTRATE JUDGE MBB

RECEIVED 6/1/10
AMOUNT \$ 500
SUMMONS ISSUED YES
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED 1
BY DPTY. CLK. Foley
DATE 12/30/04

COMPLAINT

Parties

1. Plaintiff, Linwood Harris ("Mr. Harris") an individual having a usual place of residence at Brockton, Plymouth County, Massachusetts.
2. Defendant is Metropolitan Life Insurance Company ("MetLife") an insurance subsidiary of Metropolitan Life, Inc., One Madison Avenue, New York, New York, doing business in the Commonwealth of Massachusetts, and the insurer of the Sears Roebuck and Co. Long Term Disability Plan has designated CT Corporations System, 101 Federal Street, Boston, MA 02110 as an agent for service of process.
3. Defendant, Sears Roebuck and Co. Long Term Disability Plan ("Plan") of which the plan administrator is Sears, Roebuck and Co. 3333 Beverly Road, Hoffman Estates, Illinois.
4. Defendant, Sears Roebuck and Co. ("Sears") is a New York corporation having a usual place of business at numerous locations in Massachusetts Sears has

designated CT Corporations System, 101 Federal Street, Boston, MA 02110 as an agent for service of process.

Jurisdiction and Venue

5. This Court has original jurisdiction for claims for benefits arising under 29 U.S.C. § 1132. Venue is proper before this Court, because the plaintiff resides in the eastern district of Massachusetts.

Facts Common to All Counts

6. At all times material hereto, Mr. Harris has been employed as a full time employee of Sears, Roebuck & Co.

7. At all times relevant hereto, Mr. Harris was a beneficiary under the Sears Long Term Disability Plan.

8. The Plan is an “employee welfare benefit plan,” as defined by ERISA, 29 U.S.C. § 1002(1), and may be sued under ERISA as an entity, pursuant to 29 U.S.C. § 1132(d)(1).

9. “MetLife” insures the Plan and is jointly liable for payment of benefits under the Plan.

10. Mr. Harris is a “participant” in the Plan, as defined by ERISA, 29 U.S.C. § 1002(7).

11. “Sears” is the Plan sponsor and plan administrator within the meaning of ERISA, 29 U.S.C. § 1002(16)(B), and a fiduciary with respect to the Plan within the meaning of ERISA 29 U.S.C. § 1002(21)(A).

12. “Mr. Harris” was employed as a sales associate by Sears within the Commonwealth of Massachusetts.

13. On or about February 25, 2001 Mr. Harris was involved in a substantial motor vehicle accident and sustained injuries to the following locations: fractured pelvis; fractured leg; fractured hip; in addition "Mr. Harris" was hospitalized for over six months, underwent several surgeries to repair his pelvis, leg and hip.

14. As a result of the injuries suffered in the car accident of February 25, 2001, he has not been able to resume his prior occupation, as a sales associate, and can not work in any occupation as defined under the plan and MetLife Insurance Policy.

15. Mr. Harris remains under the care of Dr. Miller and has continued to receive social security disability payments for his total disability.

16. At all times material hereto, and since at least February 25, 2001, Mr. Harris has been "totally disabled" within the meaning of the terms of the Plan, and has been entitled under the Plan to be paid both short-term disability and long-term disability benefits, and continues to be "totally disabled" to date.

17. "MetLife paid Mr. Harris his short-term disability from February 25, 2001 up until July 18, 2001.

18. "MetLife paid Mr. Harris his long-term disability from July 16, 2001 up until December 31, 2001, whereupon they wrongfully denied any further benefits under the plan.

19. On or about November 6, 2001 Donna Nitihala, R.N., Nurse Consultant, working for Metropolitan sent a fax to Dr. Barry Miller, M.D. to obtain Linwood Harris's medical records showing total disability.

20. Donna Nitihala, R.N.'s fax contained no return address to send the medical records of Mr. Harris to nor did that fax identify how payment would be made for the collection and copying of Mr. Harris's medical records.

21. On or about November 28, 2001 MetLife Disability Case Management Specialist, Karen Bryson sent a letter to Mr. Harris stating "we faxed a request for an attending physician statement and copies of your medical records on November 6, 2001. To date, we have received no response. Please have your doctor fully complete the enclosed attending physician's statement and return with copies of your medical records from February 1, 2001 to current. . . . If we do not receive the above-requested medical information on or by December 28, 2001 we will have no option but to close your claim and deny benefits beyond December 31, 2001 for failure to provide proof of disability and/or requested information."

22. On or about the first week of December, 2001 "Mr. Harris left a message with Dr. Miller's office requesting that the requested medical documents be forwarded to "MetLife". "Mr. Harris had previously provided the appropriate authorizations for the release of this information.

23. On or about August 30, 2001 MetLife, Paul Depree, Social Security Specialist sent a letter to Linwood Harris directing" Mr. Harris to apply for Social Security disability benefits as required under his plan. "Mr. Harris" so applied.

24. On or about December 24, 2001 MetLife received a certificate showing that Linwood Harris was "totally disabled" as of at least August 1, 2001 and that his claim was approved for \$1,496.00 a month effective August 1, 2001.

25. Social Security disability does not make any payments for benefits for partial disability or for short-term disability. The law defines disability “as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairments which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.”

26. MetLife received the benefit of “off-set” of the amount that the social Security Administration pays to “Mr. Harris which is credited against the base benefit paid by the Plan and MetLife, thereby reducing the obligation of MetLife by the amount of the payment Mr. Harris receives from the United States Social Security Administration each month.

27. Prior to the “off-set” Mr. Harris’s benefits paid under the Plan was two thousand three hundred and fifty (\$2,350.00) dollars a month.

28. On or about December 31, 2001 MetLife, for unlawful reasons, terminated benefit payments to Mr. Harris.

29. On January 3, 2002 MetLife closed Linwood Harris’s long-term disability claim file, for failure to provide proof of disability and/or requested information.

30. Sometime after November 26, 2001 Metropolitan sent a check for fifty dollars to Dr. Miller’s office to cover the fees for copying Mr. Linwood Harris’s medical records in addition they also provided an address to mail the records to.

31. On or about January 10, 2002 Dr. Miller’s office mailed “Mr. Harris’s records to “MetLife”

32. On or about January 15, 2002 MetLife received Mr. Harris's medical records and other documents requested by MetLife. However, no action was taken on Mr. Harris's file. It remained closed.

33. Mr. Harris filed an appeal of his benefits denial.

34. By letter dated August 23, 2004 MetLife wrote to Mr. Harris stating that his appeal would not be considered and that "no further review or appeal of the denial will be considered."

35. Mr. Harris has exhausted his administrative remedies under the Plan, insurance policy and ERISA.

36. To the extent that MetLife had been granted discretionary authority under the Plan, both the Plan and MetLife abused that discretion, for many reasons, including its failure to: consider the certificate of disability provided by the United States Social Security Administration; document the received medical records of Mr. Harris; provide a return address on their request to Dr. Miller; to provide payment for the requested records; and to advise Dr. Miller that the documents needed to be received by December 28, 2001 or Mr. Harris's benefits would be terminated.

Count I

Benefits due from MetLife and the

Plan under ERISA, 29 U.S.C. § 1132

37. Mr. Harris realleges paragraphs 1 through 36 and incorporates the same by reference as if fully set forth herein again.

38. As the de facto plan administrator and benefit payor, MetLife is operating under a conflict of interest, and to the extent that MetLife contends that its decision to

terminate benefits under the discretionary standard of review, the contention must be denied, and MetLife's decision must be reviewed under a *de novo* standard of review.

39. To the extent that MetLife had been granted discretionary authority under the Plan, both MetLife and the Plan abused that discretion, for reasons including its failure to: consider the certificate of disability provided by the United States Social Security Administration; document the received medical records of Mr. Harris; provide a return address on their request to Dr. Miller; to provide payment for the requested records; and to advise Dr. Miller that the documents needed to be received by December 28, 2001 or Mr. Harris's benefits would be terminated and further it engaged in an inherently unfair claim process, by not providing the necessary items to complete a task, i.e. check; return address the due date and holding their shortcomings against Mr. Harris.

40. MetLife's decision to terminate Mr. Harris's benefits under the Plan were wrongful whether determined under *de novo* standard, or the arbitrary and capricious standard, or the heightened scrutiny standard of review.

41. Ms. Harris fulfilled all of the requirements for obtaining benefits under the Plan and the insurance policy of MetLife.

42. As a result of MetLife's and the Plan's refusal and failure to pay to Mr. Harris disability benefits provided to him and to those participants who are totally disabled, Mr. Harris is entitled to relief against MetLife and the Plan to recover benefits due to him under the term of the Plan and insurance policy, to enforce his rights to benefits under the Plan and to clarify his rights to future benefits under the Plan and insurance policy, pursuant to 29 U.S.C. § 1132 (a)(1)(B), (2) and (3).

Count II

Breach of Contract Against MetLife

43. Mr. Harris realleges paragraphs 1 through 36 and incorporates the same by reference as if fully set forth herein again.

44. Mr. Harris is a direct, or intended third party beneficiary of an insurance contract between Sears Roebuck and Co. and MetLife.

MetLife breached that insurance contract, and caused Mr. Harris to suffer damages.

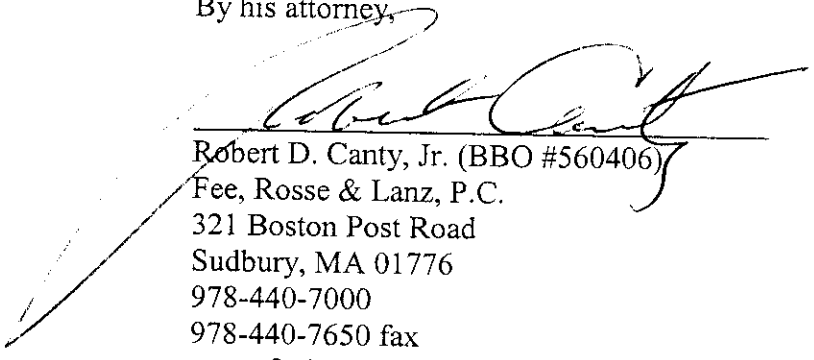
WHEREFORE, plaintiff Linwood Harris demands relief and judgment, jointly and severally, against the defendants as follows:

1. In an amount of damages to be determined by this Court, or jury, plus pre-judgment interest, post-judgment interest, costs and reasonable attorneys' fees allowed by statute or otherwise.
2. Injunctive relief declaring the rights and duties of the plaintiff and defendants with respect to past benefits owed to the plaintiff, and future benefits to be paid to the plaintiff.
3. For an order precluding a remand of this matter for further determination by the defendants regarding the termination of benefits.
4. For such other relief as this Court deems just and proper.

**PLAINTIFF CLAIMS TRIAL BY JURY ON ALL ISSUES TRIABLE BY
JURY.**

LINWOOD HARRIS

By his attorney,



Robert D. Canty, Jr. (BBO #560406)

Fee, Rosse & Lanz, P.C.

321 Boston Post Road

Sudbury, MA 01776

978-440-7000

978-440-7650 fax

www.feelaw.com

12-30-04

I. (a) PLAINTIFFS Linwood Harris

DEFENDANTS Metropolitan Life Ins. Co.,
Sears Roebuck and Co. Long Term Disability Plan
and Sears Roebuck Co.

(b) County of Residence of First Listed Plaintiff Plymouth
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Suffolk County, New York
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Fee, Rosse & Lanz, P.C.
321 Boston Post Road
Sudbury, MA 01776

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for and One Box for Defendant)

- (For Diversity Cases Only)
Citizen of This State PTF ☐ DEF ☐
Citizen of Another State ☐ 2 ☐ 2 Incorporated or Principal Place of Business in This State PTF ☐ DEF ☐
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Incorporated and Principal of Business in Another State ☐ 5 ☐ 5
Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination <input type="checkbox"/> Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

29 U.S.C. Section 1132 This suit arises from the wrongful denial of benefits available to the plaintiff through a long-term disability plan.

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE

12.30.04

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____